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A
DEFENCE
OF THE
MINORITY.

Chas. Townshend



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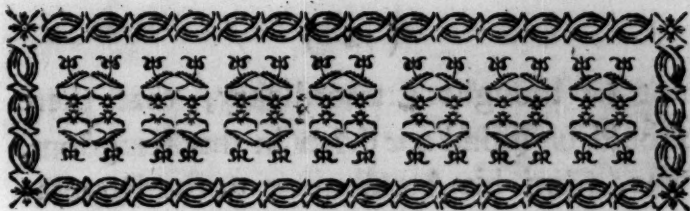
QUESTIONS

RELATIVE TO

GENERAL WARRANTS

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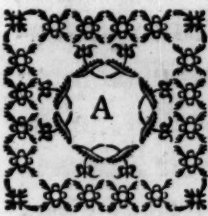
DEFENCE

OF THE

MINORITY

IN THE

HOUSE of COMMONS, &c.

FTER the many Arts employed, and the occasional Writings lately published, and diligently circulated, to establish an Opinion favourable to the Views of the Ministry, upon the Motion made and rejected in the last Session of Parliament, for declaring the Illegality of certain general Warrants, issued by Lord *Halifax* ; it will probably

B

not

not be thought extraordinary, that there should be found *one* Man in this Kingdom, who, from his Attachment to the Reputation and Merit of the 220 Members of the Minority of that Day, so grossly injured in these Writings, is unwilling to acquiesce in Silence under so general and wilful a Misrepresentation, both of the Subject itself and of Their Conduct.

One of these Writers, who seems to bear some Marks of Authority, begins His Work * with this Observation : “ That it is not singular, that some of the Constituents of the Members of the Minority should not be perfectly acquainted with the Motives to the Question, which was this Year brought into the House, considering their Distance from the Scene of Action, and the Diligence used in the Misrepresentation of Facts.” He next accuses some particular Members of Ignorance or Insincerity, for having declared in their Answers to the Address of Thanks from their Constituents ; “ That They were defending the undoubted and undisputed Birth-right of the Subject,” and then states the Mo-

* A Letter first published in the *Gazetteer* of May 23, and lately reprinted with the *Wallet*.

tion lately made in the House of Commons to have been this, “ Whether a general Warrant from a Secretary of State be warrantable by Law or not.”

Now if it should happen to be true, (and I undertake to shew it) that *no such Motion* was made in the House of Commons, and that this *favourite Proclamation* of the Ministry is, in every Fact, Inference and Argument, false as applied to Things, and unjust as applied to Persons; it will then indeed not be thought extraordinary, that *Constituents at a Distance should be sometimes misled by Diligence in the Misrepresentation of Facts*. It will be clearly discerned, upon what Grounds these Writers have proceeded to charge others with Ignorance and wilful Fallacy, for differing from Them upon a great national Question, the Terms of which They have not yet learnt, and the Meaning of which They have not comprehended; and consequently how far They are Themselves in the Predicament, either of Those, whom They condemn for Ignorance, or of Those, whom They accuse of Falshood,

It is become incumbent upon me to demonstrate the Truth of this Assertion, unless I would be ranked in the same Class of confident Writers : Nevertheless I enter upon the Proof with no other Apprehension, than what the Difficulty of the Subject naturally creates ; where so many Proceedings in Parliament and Judicature are to be stated, and where every Step, the Motives of every Measure, and the Consequences, are to be explained with some Precision, both in Argument and Language.

In the first Place then I am to shew, that the Motion, stated in the Letter to the Leaders of the Minority, never was made in the House of Commons : to prove which, I need only transcribe from the Votes the Motion made on the 14th of *February*, which was, “ That a general Warrant for apprehending and seizing the Authors, Printers and Publishers of a seditious Libel, together with their Papers, is not warranted by Law.”

It is obvious to every Body, how far this Question differs from that stated by the Author, not in form but in substance,
His

His Question is general ; it extends to all Cases of Emergency, in the instant of any supposed public Danger or Confusion ; and the Determination of it in the negative would preclude the use of general Warrants issued by Secretaries of State, in every *extreme* Case, which Imagination can put, or which Necessity would justify. Whereas the Question, actually moved in the House, confines itself to general Warrants issued *in the Case of a seditious Libel* ; it is precise ; it decides not upon the Exercise of the same Power in Cases not included ; it was formed thus to avoid the very Objections now made to the Question as stated by the Author, and perhaps has since been misrepresented in the Political Writings of these Times, merely for the Opportunity of making such Objections. There is so essential a Difference between these two Questions, that it is evident, a thinking and an honest Man might very fairly and consistently have voted *for* the one, and *against* the other. For example, in the Case of High Treason, I may think it justifiable in Consideration of the *public Danger*, the *nature of the Offence*, the *Necessity of Secrecy and Dispatch in preventing such Conspiracies against the public Weal*, to connive at the use

use of general Warrants of Apprehension ; but in the Case of a Libel already published, where the Mischief is done, where the Degree of public Danger is comparatively so small, and the Offence itself, to the reproach of our Laws, so very vague and undefined, I may, and do, think, that such an *unlimited* Power, over the Persons and Goods of all Subjects, is neither necessary nor expedient to be lodged in any Hands. The Minority saw this Distinction. They adopted it. They conformed their Question to it. So far were They from making the Proposition, which these Writers impute to Them, that They framed Their Motion upon the Case before Them ; confined it to a seditious Libel ; and had both too much Sense and too sincere a Regard for public Tranquillity to stir *captiously* so delicate a Question of Government, as that which They are now, with so little Candor, charged with having actually agitated,

Having thus absolutely misunderstood and mis-stated the Question, the same Author proceeds, as he says, “ To evince the Truth of this Assertion, to place the Subject in a right Point of View, and to prove, that the Minority did not act from any such
liberal

liberal Motive, as the Desire of securing the Person of the Subject, or his Papers, against illegal Seizures in such Cases."

To demonstrate this, he sets out with assuming, that the Lord Chief Justice of the Common Pleas had, in the Cause of *Wilkes* against *Wood*, determined the Seizure of Papers, under such Warrant, in such Cases, to have been illegal. He then assumes, in the second Place, That Bills of Exceptions presented in Appeal from the Decision of the Chief Justice of the Common Pleas, upon the Legality of the Warrant, have *ever since* been actually depending before the whole Bench of Judges ; and at last, being now in Possession of the advantage Ground, to carry which He before assumed all these preliminary Points, He roundly asserts that, *in this Situation*, and Matters thus depending, it was the Duty of the Minority to have waited the Issue of that Appeal. We have seen some Instances of the Writer's Exactness in stating the Motion in Parliament ; let us now enquire, if he is more accurate in his Detail of the Proceedings in the Court of Common Pleas.

In

In the first Place then I maintain, in Contradiction to these Assertions, that the Question of the Legality of the Warrant is not *now* sub judice, nor *has ever yet been in a Course of legal Determination*; to prove which I will state fairly and precisely the Rise and Nature of the several Bills of Exceptions, either *actually tendered* or prepared, and then leave the Reader to determine by his own Judgment.

In the Action brought against the Messengers, by the Servants of the Printers a Bill of Exceptions was, I admit, tendered; but it should be also remembered, that the only Question depending upon that Bill is, *whether the Secretary of State be a Justice of the Peace* within the Equity of the Act of the 24th of George the Second; which is a Point very material in the Defence of the Messengers acting under Orders, but has no Connection with the Question upon the Legality of the Warrant itself.*

IN

* The Bill of Exceptions tendered in this Cause, after reciting the Pleadings, and stating the Evidence produced on the Part of the Defendants, goes on thus :

In the Action brought by *Wilkes* against
Wood, after Mr. *Wood* had pleaded as the
Messengers

thus : “ Whereupon the said Council for the aforesaid Defendants, did then and there insist before the Chief Justice aforesaid, on the behalf of the Defendants abovenamed; that the said several Matters so produced and given in Evidence on the Part of the said Defendants as aforesaid; were sufficient and ought to be admitted and allowed as decisive Evidence, to entitle the said Defendants to the benefit of the Statute made in the Twenty-fourth Year of the Reign of his late Majesty King *George* the Second, intituled, “ An Act for rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in Obedience to their Warrants; and, that therefore, the said *William Huckell* ought to be barred of his aforesaid Action, and the said Defendants acquitted thereof, and thereupon, the said Defendants by their Council aforesaid, did then and there pray of the said Chief Justice to admit and allow, the said Matters and proof so produced and given in Evidence for the said Defendants as aforesaid, to be conclusive Evidence to entitle the said Defendants to the benefit of the Statute aforesaid, and to bar the said *William* of his Action aforesaid. But to this, the Council learned in the Law, on behalf of the said *William Huckell*, did then and there insist before the Chief Justice aforesaid, that the Matters and Evidence aforesaid, so produced and proved on the Part of the said Defendants as aforesaid, were not sufficient nor ought to be admitted

Messengers had done in the former Case, and rested his whole Defence on the general

or allowed to intitle the said Defendants to the benefit of the Statute aforesaid, or to bar the said *William Huckell* of his aforesaid Action; and that neither the said Defendants, or any of them, nor the said Earl of *Halifax* were or was within the Words or Meaning of the Statute made in the Seventh Year of the Reign of his late Majesty King *James* the First, intituled, An Act for ease in Pleading against Troublesome and Contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office; nor of the Statute made in the Twenty-first Year of the Reign of the same late King, intituled, An Act to enlarge and make perpetual the Act made for Ease in Pleading, against Troublesome and Contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign; nor of the said Statute made in the Twenty-fourth Year of the Reign of his late Majesty King *George* the Second; nor in any ways intituled to the Benefit of any of those Statutes. And the Council for the said *William Huckell* further insisted, that the Seizure and Imprisonment of the said *William Huckell*, were not made or done in Obedience to the said Warrant, nor had the said Defendants, or any of them in that behalf, any Authority thereby: and the said Chief Justice, did then and there declare and deliver his Opinion to the

Jury

neral Issue, and the Cause stood ready for Trial ; the Court of Common Pleas was moved on the part of the Defendant, that He might be permitted to justify under the Warrant, *in order to bring the Matter fully and fairly before the Court* ; which the Court after Consideration, for *that Reason*, and *that only*, allowed. But when the Cause came to be tried, Mr. *Wood*, by the Advice of his Counsel, or Attorney, and to the Surprise of the Chief Justice, deserted his Justification ; declined the Opportunity which the Court had indulged him with, of bringing the Validity of the Warrant into Debate ; and resorted to the old Objection, namely, that the Secretary of State was a Justice of the Peace, and therefore ought to have been made a Party Defendant in the Suit. In consequence of which, the

Jury aforesaid, that the said several Matters so produced and proved on the Part of the said Defendants, were not upon the whole Case, sufficient to bar the said *William Huckell* of his aforesaid Action against them, and with that Opinion left the same to the said Jury ; and the Jury aforesaid, then and there gave their Verdict for the said *William Huckell*, and Three Hundred Pounds Damages : Whereupon the said Council for the said Defendants, did then and there on the behalf of the said Defendants, except to the aforesaid Opinion of the said Chief Justice."

the Bill of Exceptions offered in this, as in the former Action, turned only upon the *same single Point*, and the Question of the Legality of the Warrant was a *second Time avoided*.*

In

* The Bill of Exceptions in this Cause, recites the special Justification, and in that Respect differs from the former ; but the Conclusion, which is the material Part of the Bill is substantially the same : “ Whereupon the said Council for the said *Robert Wood*, having proved the several Matters aforesaid, did then on behalf of the said *Robert*, alledge and insist before the Chief Justice abovenamed, that the said several Matters so produced and given in Evidence on the part of the said *Robert Wood*, were sufficient and ought to be admitted and allowed as decisive Evidence, to entitle the said *Robert Wood* to the benefit of the Statute, made in the Seventh Year of the Reign of King *James* the First, intituled, An Act for ease in Pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Offices : And also, to the benefit of the Statute made in the Twenty-first Year of the Reign of the same King *James* the First, intituled, An Act to enlarge and make perpetual the Act, made for Ease in Pleading against troublesome Suits, prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the
Seventh

In the Cause, in which *Leach* the Printer was Plaintiff, the Messengers pleaded *the general Issue*, and, at the same time, a *special Justification*, stating the Warrant of Lord Halifax, and the Acts which they had done to have been *in Obedience to, and in the Execution of that Warrant*. At the Trial, they entered at large into the Proof of the Facts alleged in *their special Justification*, which led the Chief Justice, in stating the Evidence to the Jury, to declare it as his clear Opinion, that if the Facts of the Justification *had been proved*, the Warrant, under

Seventh Year of his Majesty's most happy Reign : And likewise, to the benefit of the Statute made in the Twenty-fourth Year of the Reign of our late Sovereign Lord King *George* the Second, intituled, An Act for rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in Obedience to their Warrants ; and therefore, that the said *John Wilkes*, ought to be barred and precluded from his aforesaid Action, and the said *Robert Wood* acquitted thereof. And thereupon, the said *Robert Wood*, by his Council aforesaid, then prayed of the said Chief Justice, to admit and allow the said several Matters and Proofs so produced and given in Evidence for the said *Robert Wood* as aforesaid, to be sufficient and competent Evidence, to entitle the said *Robert*, to the benefit of the said several Statutes, and to bar and preclude the said *John Wilkes* from his Action aforesaid."

under which the Messengers had acted and justified, was illegal. But as the Jury, by Their Verdict, were of Opinion, that the Defendants *had failed in their Proof*, no Bill of Exceptions could lie upon the Question of the Validity of the Warrant, as no Facts were found by the Jury, upon which the Law could arise, or the Exceptions be supported. *

After

* The Bill of Exceptions in *Leach's Case*, recites the special Justification of the Messengers, and the Evidence produced by them in support of it. But the Point put in Issue by the Conclusion of it, is the same without the least Difference, as in the former Bills of Exceptions: "Whereupon the said Council for the said Defendants, did then and there insist before the Chief Justice aforesaid, on the behalf of the Defendants abovenamed, that the said several Matters so produced and given in Evidence, on the Part of the said Defendants as aforesaid, were sufficient, and ought to be admitted and allowed as decisive Evidence, to entitle the said Defendants to the benefit of the Statute, made in the Twenty fourth Year of the Reign of his late Majesty King *George* the Second, intituled, An Act for rendering Justices of the Peace, more safe in the Execution of their Office, and for indemnifying Constables and others acting in Obedience to their Warrants; and that therefore, the said *Dryden Leach*, ought to be barred of his aforesaid Action, and the said Defendants acquitted thereof;

After this Representation of the Proceedings in these Three Trials, which, we persuade ourselves, will be found to be candid and exact, upon comparing it with the Bills of Exceptions inserted in the Notes, it will probably be admitted, that the only Question now in legal Issue, or that can be brought before the Court, upon these several Bills of Exceptions, is whether a Secretary of State be a Justice of Peace.

But it may be asked, Will not this great Question be brought to Issue in the Cause now depending between Mr. *Wilkes* and Lord *Halifax* ?

That it may is *certain*, that it will, I think, is *doubtful*. Who knows how much longer a farther Use of the Advantages of Privilege on one Side and Distress on the other may continue to retard the Course of this

thereof; and thereupon the said Defendants by their Council aforesaid, did then and there pray of the said Chief Justice, to admit and allow the said Matters and Proof so produced and given in Evidence, for the said Defendants as aforesaid, to be conclusive Evidence, to entitle the said Defendants to the benefit of the Statute aforesaid, and to bar the said *Dryden Leach* of his Action aforesaid."

this Trial*. And is such a Contingency as this to be cited in Proof of a positive Assertion, that the Question itself was *actually in Issue*, when the Motion was depending in the House of Commons? Will any Man have the Assurance to argue, that the House of Commons could not, consistently with their Duty or Dignity, have refused to acquiesce under such an unconstitutional and illegal Exercise of an uncontrolled

* *Wilkes*, Esq; against the Earl of *Halifax* and the three Messengers who executed the general Warrant } Original was sued out, tested the first of *June* and returnable from the Day of the Holy Trinity in three Weeks (19th of *June*, 1763); and the Earl being summoned cast an *Essoign*, which was adjourned until the 18th of *November*.—Then comes in Privilege; which being at an End and all the *Essoigns* expired, a *Distringas* was taken out, tested the 9th of May, being the first Day of *Easter Term*, 1764, returnable from the Day of *Easter* in five Weeks (27th of May);—the Sheriff returns Forty Shillings *Issues*—The Earl does not appear—The Court directs Fifty Pounds *Issues*—An alias *Distringas* is taken out, tested the 30th of May, and returnable on the Morrow of the Holy Trinity (18th of *June*);—the Sheriff returns his *Issues*.—The Earl still refuses to appear—The Court orders Five Hundred Pounds *Issues*—A *Pluries Distringas* is taken out, tested the first Day of Trinity Term (the 22d of *June*) and returnable in three Weeks of the Holy Trinity (the 8th of *July*);—The Earl has not even yet appeared.

troled Power *in Office*, grounded on no found Principles or Authorities of Law, made requisite by no Necessities of State, incompatible with personal Freedom, and *frequently condemned by former Parliaments*; upon the distant and precarious Suggestion, that it was possible, that *in some future Action*, to be postponed in some Degree *at the Will of the Party accused*, this great national Point might come to Issue? Yet thus do the Advocates of the present Ministry, and the Defenders of this Question humiliate the two Houses of Parliament; not only to encrease the Power of the Crown, (that might carry some Air of Principle and System with it) but to cover the Error of a Minister, infringing the Rights of the Subject in the most essential Article of Liberty, upon the Authority and Example of *secret and unadjudged* Precedents in the *modern* Practice of a *modern* Office; seeking Refuge in the Courts of Law from the Interposition and Resentment of Parliament, and yet to the utmost retarding the Issue of that very Appeal to Judicature, upon the full and public Assurances of which the Majority of the House of Commons were persuaded to leave this great Question in Reference.

Under the former Head we have proved, that the Question moved in the House of Commons has been mis-stated: Under this we have shewn, that the Proceedings of the Court of Common Pleas have not been less misrepresented: That there is no Authority for the Assertion so confidently published, that Bills of Exception have been *actually tendered upon the Question of the Legality of the Warrant*; and that the Court of Common Pleas, at this very instant, (many Months after it was resolved, that the House ought not to take Cognizance of the Question, upon the single Consideration and Assurance, that it would have a speedy Hearing and Determination at Law,) finds itself under the Necessity of reverting to the ancient Statute Law, in Preference to modern Practice, in order to give a *real* Force to its Issues for compelling Lord *Halifax* to such an Appearance, as will bring the Matter to Decision.

But, it seems, whatever was the apparent Conduct of the Minority, They could not be sincere; because, after losing This Question, They refused a Bill moved by Sir *John Philipps*, to *regulate the Practice*
of

of Secretaries of State in issuing Warrants; which Bill, it is alleged, the Leaders of the Minority opposed, and, upon the Evidence of that Opposition, they are now arraigned for Insincerity. Here too the same Writers are unfortunate, and again led into another false Triumph by their original Ignorance of the Question moved in the House of Commons. They would otherwise have recollected, that the Minority held the “ general Warrant for apprehending and seizing the Authors, Printers and Publishers of a seditious Libel, together with their Papers, to be Illegal,” and from thence have seen, how little They could vote for a Bill *to regulate*, what They did not admit to be legal,

Can it be seriously believed, that Sir *John Philipps* or the Ministry expected to be supported by them in bringing in a Bill to regulate, what They had asserted neither did nor ought to exist? No: They could have no Right to suppose the Minority would not adhere to their declared Opinion; and they must have recollected, that if They acted uniformly, They would necessarily confine Themselves to the *single Case* before Them. By what other Con-

duct could they have hoped to execute the Plan upon which They professed to act? To provide at once for private Liberty and public Safety; by condemning the wanton Use of an *usurped* Power, in the Instance under Consideration, which, in their Judgment, had no Circumstances to justify it; and by leaving uncensured, the Use *even of illegal Warrants in those extreme Cases*, which it is impossible to describe and distinguish before they happen; but which the wisest Legislators of all Times, and the Framers of the Law of *England* in particular, have ever thought it most expedient and safe to consider as Deviations from the general Law; to be made at the peril of the Persons acting, and to be explained in the Exception, and defended in the Exercise, by the Allegation and Proof of those extraordinary Circumstances, which the Minority argued might justify, but ought always to accompany such Cases. They alleged that extraordinary Provisions might else be extended to *all* Times, and an Authority, granted reluctantly even in the Minute of *imminent Danger*, might, in secure Peace, be made destructive to Freedom.

This

This Method of Reasoning is the more conclusive, because no Danger can follow to the Servants of the Crown from leaving the Law upon this Footing; for should a Secretary of State, upon Intelligence of any Crime, really formidable to the Commonwealth, and of a Nature requiring Dispatch and Secrecy, be under a Necessity of issuing such a Warrant as is now complained of; and should His Messengers, in pursuit of the Offenders, take up an innocent Man; is it reasonable to suppose, that any Jury would be found so narrow in Their Notions of Government, as not to attend to a Distinction clearly made and well supported upon the peculiar Circumstances of such a Crisis? Or should Prejudice or Ignorance influence the Determination of Juries, would not the Officers thus suffering for the Public be relieved by the Interposition of Parliament?

Let us recollect, what has passed in the Matter now depending. The Warrant itself has been generally held illegal. The offence against the State was no higher than publishing a Libel: No Circumstances to make a general Warrant necessary in the Method of apprehending the Author: The
Pro-

Proceedings in the Execution of it aggravated by every Circumstance of Wantonness, Negligence and Oppression: and nevertheless, it has not yet incurred the Censure of Parliament. Where then would be the Difficulty of Defence, *in a Case* which *had* Circumstances of *real* Justification to allege, or in which a Warrant, not strictly legal, could be shewn *to have been necessary*, or the Danger imminent? Thus many in the Minority reasoned, and, thus reasoning, They proved Themselves the true and *temperate* Friends of Liberty, no less when They refused, by regulating this Power, to furnish it with the Sanction of a Statute, than when They proposed, by a declaratory Motion, grounded in the Circumstances of a Transaction before Them, to confirm, as far as the Resolution of one House would go, the common Law of the Land; leaving the Use of Warrants, which, in the Case before Them, had no Justification, but were supposed to be possibly necessary in other Cases, at present by Them neither condemned nor justified, to be hereafter censured or excused, as the same Law should decide, and such Cases should require. But in one part of this Praise, let not the Ministry be deprived of Their just Share; for no *real* Design of
passing

passing the Bill appeared amongst Them ; Sir *John Philipps* himself opening cursorily the Regulations of this Bill, had the ill Fortune to make little Impression upon the Body even of the Majority of the House, and the whole Conduct of the Day fully demonstrated, that it was thought, even by that Majority, to be a doubtful Proposition, resulting more from a Sense of Shame, than any serious or concerted Plan of either vindicating the Law or establishing the ancient hereditary Right of the Subject against future similar Oppression.

Another Reason alleged to prove the Minority not sincere in their Wishes to secure the Freedom of the Subject, is drawn from Their Proceeding *by Motion* in the House of Commons. But it is difficult to comprehend the Force of this singular Objection. Perhaps these Writers do not know, that nothing is more usual or regular, in both Houses of Parliament, than to take up important Matters of public Administration separately in either House ; to express the Sense of that House by a general Resolution, and, upon that Resolution, to bring in a Bill. If this be real Ignorance of the Subject, and not contrived to mislead the Public
upon

upon so national a Question, "*by Hardiness in propagating false Facts,*" by substituting a Motion never made, in the Place of a Motion moved in the House of Commons, by sacrificing the Characters of the Minority, the fair Report of the Proceedings of the Commons of *England*, and Truth itself, to Their own vain and impracticable Hope of vindicating an embarrassed, and, *in that Day*, vanquished Administration; perhaps they will forgive a Stranger, if he should for Their Satisfaction, and for clearing this Part of the Argument, favour Them with some, out of many, Instances of this Method of Proceeding, and supply Them with that Knowledge Their Friends have so unfairly concealed.

They have forgot to apprize Them of the Case of Lord Chief Justice *Keeling* in the Reign of *Charles* the Second, * when, *upon the Information of a private Member of the House*, of illegal Acts committed by the Chief Justice in the Treatment of Juries, the House ordered him to attend at the Bar, and find-

* Commons Journals, 13 December 1667. A. Gray's Debates.

finding the Chief Justice, defending himself by Precedents, the Practice of the Courts, and the Opinion of the Judges, They accepted those Authorities *in excuse of the Judge, whom They accordingly discharged*, but They came to the following Resolution, “ Resolved; that the Precedents and Practice of fining Juries is illegal.”

It may not be improper to observe that, in this Case, the Commons proceeded upon the Information of a private Member of the House, stating a public Grievance: That They proceeded *by Resolution*: That They decided against *Precedents and Practice* and the *Opinion of the Judges*: And that They thought it not inconsistent to condemn the *Thing* and *acquit the Person*.

They should have been informed also, that in 1689 *, upon Complaint made to the House of the Custody of the Earl of Danby, by a Warrant issued by Secretary Nottingham, the House calling for the Warrant, and finding that it bore Date *one Day before* the Information given, and receiving

* Commons Journals, 28 June 1689.

no satisfactory Answer upon the Point from the Secretary of State, resolved, That the taking Lord *Danby*, *by that Warrant*, was illegal.

That in 1680 *, Chief Justice *Scroggs*, having issued several general Warrants, empowering *Officers* and *Their Assistants*, from Time to Time, to seize and take into Custody *all Persons*, whom they shall suspect of writing and publishing seditious Libels, &c. the Commons, in this Instance, also interposed, and, by Resolution, declared the said Warrants to be *arbitrary* and *illegal*; and thereby taught that despotic and corrupt Judge, who, in his Age, perhaps affected *to regard the Resolutions of either House of Parliament no more than the Resolutions of a Parcel of drunken Porters*, that the just Resentment of Parliament, will, in all Cases, sooner or later, overtake the Enemies, and vindicate the Constitution of these Kingdoms.

More Instances, I am assured, of the same Kind might be urged in Justification

* Commons Journals, 23 December 1680.

of the Interposition of the Commons in Cases of this Nature, of the Proceeding by Resolution in the first Instance, and of the Motion for censuring the general Warrants, by a Declaration of their Illegality ; but the Strength of Precedents turns not so much upon the Number, as upon the Application of them.

I Trust the Cases I have cited will be thought apposite, if not each separately to every Point, yet, in the whole and taken together, conclusive to every material Circumstance in the Proceeding of the last Year ; and therefore I will finish this Part of my Answer with remarking, that such was the Opinion of the House of Lords in 1640 *, of these general Warrants, such *Their* Idea *then* of Their Jurisdiction, and such Their Jealousy *then* of Their personal Freedom, that, the Papers of two of their own Members having been seized, under one of these Warrants, They declared it a Breach of Privilege ; the Officer executing it was brought upon his Knees

* Parliamentary History, Vol. IX. P. 34, 35, 36, 37. Rapin, Vol. X. P. 420. Whitelock, P. 37.

at the Bar, and Satisfaction was made to the injured Lords *. In 1692, in the Case of Lord *Marlborough*, confined without legal Evidence, it was resolved, that the Power exercised in *that* Case was *illegal*. And it was also resolved, that the Resolutions of the House be entered in the Books, as a *standing Direction to all future Judges*, and to cut off all Excuse for any such Illegalities in Times to come †. And let it not be forgot, that the Commons, in the same Year, rejected a Bill sent down to them by the Lords, and grounded upon the Case of Lord *Marlborough*, “for indemnifying Secretaries of State for such Commitments in *treasonable* Cases, and to limit Their Powers by Law ;” the House of Commons *then* reasoning, and prudently acting, upon the

* It appears from *Rapin*, *Whitelock*, and others, that the Pockets and Studies of these Lords were searched upon the Suspicion of holding Correspondence with the *Scots*, then actually in Arms, and that their Persons were not taken into Custody, even upon this Charge, and in those Times; and the whole Proceedings of the Lords in Resentment of this, which they *then* held to be a Breach of their Privilege, are related at large in the Parliamentary History.

† Lords Journals, 14 Nov. 1692.

same

same Principles, and with the *same Discretion*, which are in *these Times resented and condemned* in the late Minority, following the Example of Their Ancestors in a Case very similar †.

It is not unpleasant to observe, how earnestly the Writers upon this Subject labour to make the *Case* of Mr. *Wilkes* pass for the *Cause* of Opposition, and to represent Him not only as the Idol, but as the Object of the Minority in the Stand They made upon this very Question. Yet if I may be allowed to make a Remark upon the Wisdom of this Plan, I think it is rather deficient. The Kingdom has been tried upon this Topic, and the Art has failed : The Man-

† The Debate went off in a Bill, that *indemnified* the Ministry for those Commitments, *but limited them* for the future by several Rules ; all which Rules were rejected by the Commons. They thought those Limitations gave a *legal Power* to commit, in Cases where they were observed ; whereas they thought the safer way was to *indemnify the Ministry*, when it was visible they did not commit any but upon a real Danger, and not to set them *any Rules* : Since as to the committing of suspected Persons, *where the Danger is real and visible*, the public Safety must be first looked to, and supersede all particular Laws. Burnet, Vol. 2. P. 103.

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ner of the Expulsion, the Conduct of Numbers now in the Minority, uniformly kept throughout that Enquiry, and the Evidence of Time, all confute the Calumny; inso-much that one should think the Ministers Themselves would advise these Writers another Time not to hang upon a Topic, which They have long ago called in, and at first perhaps urged so warmly, more from an officious, and, I am confident, a vain Hope of soothing the Mind of one Man, by an Attack upon his nearest Relations, than with any serious Expectation of being able to make the late Minority pass, either in this Age or in the Judgment of Posterity, for the factious Suite of any Man: A Minority composed (as it certainly was upon that Day) of Men, whose Ancestors, in their Times, and of others, who, in their own Persons, have most eminently contributed to the defence of this Constitution and Country, against foreign and domestic Enemies, from the Revolution to this Hour.

I have now gone through the several Assertions of these injudicious Advocates, who, guided by an Intemperance similar to that, which lately urged Their Patrons to advise the Dismission of General *Conway*, have, in
this

this Instance, as Their Patrons did in the other, revived a just and general Discontent, which might else, probably, have subsided in this inconstant Country.

Yet to conclude here, would not be adequate to the Cause; nor indeed would it be justice to the Persons injured. The same Public, which has seen the 220 calumniated Members of the late Minority charged with so many Things, which They never did, and with Designs, which they never formed, should now be fully and fairly informed of Their *actual* Conduct, and Their *real* Views, in moving the Question of the Legality of the Warrants.

Let Those then learn, if there be any yet sensible to the Feelings, and open to the Call of national Liberty, that it appearing, in the Course of the Proceedings against *Wilkes*, that a Subject had been taken into Custody by a general Warrant of Apprehension, issued by Lord *Halifax*, his Papers seized, and his Person kept in closest Custody, *upon the Charge of a seditious Libel*, the Public instantly took the Alarm, and the Illegality of *such* Warrants, and *such* Custody, in *such* an Offence, became universally the Topic of

of Discourse, and Ground of Apprehension and Complaint. When therefore the Proceedings against Mr. *Wilkes* were finished, *when the Honour of the Crown and the Dignity of Parliament, traduced and injured* by the licentious Paper complained of, were both *vindicated* and satisfied, and not till after the Expulsion ; two Gentlemen of distinguished Worth, Talents and Consequence in Their Country, stepped forth ; expressed their Opinion of the Illegality of the Proceedings of Lord *Halifax*, and took that Method, which to Them seemed the best, of bringing the great Question, which had so much interested the Minds of all Ranks of Men, and upon which, They alleged, They thought the Essence of private and personal Liberty depended, to an amicable Debate and candid Discussion, for the Satisfaction of this Age, and, as They trusted, for the Security of future Times.

The House adopted the Idea : The Administration acquiesced ; a Day was named ; the Ministry called for various Papers, and Volumes of Records ; and when the Hour of Debate came on, Sir *William Meredith* moved the following Question.
 “ That a general Warrant for apprehending
 ing

ing and seizing the Authors, Printers and Publishers of a seditious Libel, together with Their Papers, is not warranted by Law."

It is said, and universally believed, that in the Debate neither the Minister himself, nor the Attorney General defended the Legality of the Warrant. The M. of G. and many others who voted for adjourning the Debate, expressly declared Their detestation of the Practice, and Their Sense of the Necessity of preventing a Measure so dangerous to Liberty ; and the whole Defence of that Day consisted in arguing upon the Impropriety of deciding in Parliament a Question then depending in a Court of Judicature. They, who maintained the Propriety and Necessity of the Motion, endeavoured to shew the Fallacy of this reasoning, and dwelt upon the Importance of the Question, the Violence of the Proceeding, the Power of Parliament *exercised in similar Cases*, and the Reproach of leaving the Liberty of the Subject, in a Case of such Notoriety, suspended by a Court of Law, upon the Pretence of Bills of Exceptions, *which, when examined, would be found to turn upon other Points*, and where the De-

cision, in this Matter of universal Interest, might be long kept in suspense, at the will even of the very Party accused. Upon a Motion being made for adjourning the Debate for four Months, the Numbers were found to be 234 for the Question and 220 against it; by which this great constitutional Question, perhaps the most important that ever animated the Spirit of a free People, has been put, as it is now phrased, into a *due* course of Trial at Law; in consequence of which *candid Reference* every Method has been taken, to delay the Suit and to avoid Decision. Some seem to think it not impossible, that the Cause may be thus put off till the next Session, in which Case I am free to declare, I think the Minority of 220 will deserve every Calumny, which They have hitherto undeservedly borne, if They do not make this great Question the very first Measure of the Year; hopeless, as the Public would then be, of any Redress or Decision, from the Candor of the Minister, or from the course of Law.

Thus this great Question took its rise, thus the Minority moved it, the Ministry avoided it, the House referred it, the Ser-

vants

vants of the Crown have prosecuted it in the Courts below, and in this Situation our most essential Liberty, our undoubted Birth-right, *stands*, I beg Pardon, *hangs* at this Hour. For at this instant of Time, Lord *Halifax* from a Perseverance (*which some would celebrate for true Spirit*) may issue out another general Warrant, upon the Pretence of *the last Libel the Budget* ; by that Warrant he may order, as he before did, six Messengers, his official Instruments, without Knowledge to guide, or Property to restrain Them, in the abuse of unlimited Power, to enquire for the Author of that seditious Work also, and to seize on any Person, *whom They may think proper*, and His Papers ; and what Law remains in *allowed Force at this instant* to deter Them from seizing, upon the ground of received Opinion, the Person of that Honourable Gentleman, whom some People allege They know, and many believe, to have been, in part at least, the Author of that excellent and unanswered Work ? from entering *His House* abruptly, alarming *His Family*, keeping Him in close Custody ; tumbling His most secret and confidential Papers and Deeds carelessly *into a Sack*, as in the former Instances, and trusting them to the Hand of a common and unresponsible Person, without Schedule or
Security

Security for recovery of them ? In this Case it is true, the Outcry would be great and general, from the Character of the Person thus treated ; His ancient Family ; His *extensive*, though concealed *Generosity*, and his Popularity in that large, manufacturing, and wealthy County, which He represents with such entire Satisfaction to His Constituents, and so much Reputation to Himself. But, on the other Hand, what would not Lord *Halifax* have to say in His Defence ? It would now be alleged in His Favour, not only that there are numberless Precedents upon the File of Office, in Justification of this Practice, and that, if it be not legal by the written Letter of the Statute Law, it is Law grown out of long usage, “ but *that the House of Commons*, in the *very last* Winter, thought it so necessary a Power in Magistracy, that they refused to condemn or to abrogate it.” It would be confidently asked, “ whether their Acquiescence in the Exercise of it, upon an *express Motion*, and after *long Debate*, does not prove, that they thought the Power itself neither illegal nor dangerous ? Whether, after this Sanction given to it by the Indecision and Reference of the House of Commons, it is not to be considered as Law, until the Courts of Judicature have pronounced it is not ? It is the
Duty

Duty of Magistrates fully to exert whatever Authority is vested in them, for the *Neglect* of which They are accountable, as well as for the Abuse: And, however Lord *Halifax* might have hesitated upon the Legality of general Warrants *before the Question came under Consideration of the Commons* last Year, *from his own Doubts of the Validity of Precedents of Office, to constitute Law against the Temper of the Constitution and the Freedom of the Subject*; yet *at this Time*, a Secretary of State stands *obliged* to consider this Practice of Office as authorised by the Consent and Sanction of the two Houses of Parliament given to the Continuance of it, until it shall be annihilated judicially." This would certainly be his Vindication, and, I think, a very plausible, if not a sufficient one. Beside, the Rank of the Person makes no Difference in the Outrage, though it would in the public Reception of it. The Law is no Respector of Persons; the Libel of a Man of Parts, of Rank and Esteem, is more dangerous, than that of an inferior; the same Reasoning and the same Precedents, that justified one, must be admitted in Justification of the other; and *this* may be done upon every Reason, upon which *that* was done, as the Law now stands, and suspended as the Determination

termination is now unhappily left. To prevent this Uncertainty in so fundamental an Article of our Constitution, in which, in their Judgment, *to be in Doubt* is to be *in Danger*, the 220 calumniated Members of the Minority honourably, tho' ineffectually contended. And let the impartial Public now decide, whether they are most indebted to those, who laboured to bring this Their great Interest to an immediate Determination, or to the 234 Members of the Majority of that Day, who prevailed in having it referred to a future Trial at Law: A method of Decision, which, it seems neither the Importance of the Question, nor the Recollection of the most solemn Assurances, given in full Senate, nor the utmost Endeavours of the Party injured, nor the ordinary Jurisdiction of the Court of Common Pleas, nor the Authority of the illustrious and truly Patriot Judge presiding in that Court, have, as yet, been sufficient to bring on.

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